

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 287 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

PATEL CHHAGANLAL NARAN

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Appearance:

MR SP DAVE, LD. APP for Petitioner

MR RV MEHTA, LA through legal aid for Respondent No.1

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 21/03/98

ORAL JUDGEMENT

1. This appeal is directed against the order dated 6/2/1989 passed by the Ld. Judicial Magistrate First Class, Manavadar, Dist. Junagadh in Criminal Case No.29 of 1989 convicting the accused (respondent herein) of the offence punishable u/S. 92 of the Factories Act, 1948 (for short 'the Act') read with section 42(1) of the Act.

2. The lapse which was complained of against the accused was for not having adequate and suitable facilities for washing and for adequately screened facilities for female workers. Summons was issued against the accused. The accused pleaded guilty to the lapse stating that (1) it was his first offence and he was in great repentance, (2) he was of ordinary economic condition and that his intention was bonafide, (3) he is a man of family and if heavy fine was imposed, it would adversely affect his financial condition and social life and he would feel the life burdensome, and (4) the offence was nothing but a technical lapse and he was expressing his apology for the same.

3. Bearing in mind the aforesaid circumstances, the learned Magistrate imposed sentence of fine in the sum of Rs.50/- for committing breach of section 42(1) of the Act and in default of payment of fine to suffer simple imprisonment for a period of 2 days.

4. I have heard Ld. A.P.P. for the State and learned advocate for the respondent appointed through legal aid.

5. The learned advocate for the respondent submitted that although the lapse on the part of the accused was under the relevant provisions of the Act, which is a beneficial legislation, the lapse is very technical and no minimum sentence has been prescribed for such a lapse. There is no loss or injury to the worker as a result of the lapse in question. The lapse was a bonafide lapse. Hence, under the circumstances set out by the accused before the Ld. Magistrate there is a true and proper justification for not awarding the harsher sentence. The Ld. A.P.P. for the State submitted that bearing in mind the fact that the Act is beneficial legislation strict view of any of the lapses under the Act should be taken.

6. In view of the facts and circumstances noted above and in view of the fact that the accused has during the pendency of this appeal not remained a partner of the firm in which he was managing the affairs and that nearly 9 years have passed since the sentence was imposed and no useful purpose would be served by enhancing the sentence of fine, this appeal cannot be entertained. It would be noted that the accused was dealt with in a summary manner under the aforesaid circumstances and minor penalty was obviously in contemplation for following the procedure of proceeding against the accused by the Ld. Magistrate.

In the result, this appeal is dismissed.

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\*\*PVR\*\* cr.a28889j.